

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>CONSUMERS ENERGY COMPANY</b> for a	)	
reconciliation of its gas cost recovery	)	Case No. U-15454-R
revenues and expenses for the 12-month	)	
period from April 2008 to March 2009.	)	
_____	)	

**NOTICE OF PROPOSAL FOR DECISION**

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on August 25, 2010.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before September 8, 2010, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before September 20, 2010. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing of exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for

Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

STATE OFFICE OF ADMINISTRATIVE  
HEARINGS AND RULES  
For the Michigan Public Service Commission

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Mark E. Cummins  
Administrative Law Judge

August 25, 2010  
Lansing, Michigan  
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**PROPOSAL FOR DECISION**

**I.**

**HISTORY OF PROCEEDINGS**

On June 30, 2009, Consumers Energy Company (Consumers) filed an application--with supporting testimony and exhibits--requesting reconciliation of its gas cost recovery (GCR) revenues and expenses for the 2008-2009 GCR plan period, pursuant to Section 6h(12) of 1982 PA 304 (Act 304), as amended, MCL 460.6h(12). As set forth in its application, Consumers seeks to recover from its GCR customers, through use of the roll-in methodology described in the utility's tariff Rule C7.2, a net underrecovery of approximately \$15.563 million (consisting of an underrecovery for the GCR plan period of \$16.379 million, less \$0.816 million in accrued interest owed to its GCR customers).

Pursuant to due notice, a prehearing conference was held in this matter on August 25, 2009 before Administrative Law Judge Mark E. Cummins (ALJ). In the course of that prehearing, the ALJ granted petitions to intervene filed on behalf of

Attorney General Michael A. Cox (Attorney General), the Residential Ratepayer Consortium (RRC), and the Michigan Community Action Agency Association (MCAAA). The Commission Staff (Staff) also participated in the proceedings.

Evidentiary hearings in this matter took place on March 16, 2010. In the course of those hearings, testimony was received from eight witnesses, five on behalf of Consumers and one each from the Attorney General, the RRC, and MCAAA. No witnesses were presented on behalf the Staff.

The resultant record consists of 229 pages of transcript and 39 exhibits, each of which was received into evidence. Pursuant to the amended schedule established for this case, all of the parties filed briefs on April 13, 2010. Consumers, the Attorney General, and MCAAA also filed reply briefs on May 4, 2010.

## II.

### **STATUTORY REQUIREMENTS**

Subsection 6h(12) of Act 304 requires that, not less than once a year and not later than three months after the end of the period covered by a gas utility's GCR plan, the Commission shall commence a GCR reconciliation proceeding as a contested case pursuant to Chapter 4 of Act 306 of the Public Acts of 1969, 1969 PA 306, as amended, MCL 24.201 et seq. In the course of that proceeding, the Commission is directed to reconcile the revenues recorded pursuant to the GCR factor and the allowance for cost of gas included in the base rates established in the latest Commission order for the gas utility, on the one hand, with the amounts actually expensed and included in the cost of gas sold by the utility, on the other. This section further directs the Commission to

consider any issue regarding the reasonableness and prudence of expenses for which customers are charged if the issue could not have been considered adequately in the course of a previously-conducted GCR plan case.

Subsection 6h(13) of Act 304 provides that, in its GCR reconciliation order, the Commission shall require a gas utility to refund to customers or credit to customers' bills any net amount determined to have been recovered during the GCR period in excess of the amounts actually expensed for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the Commission in the course of its GCR plan case order.

Subsection 6h(14) of Act 304 likewise provides that, in its GCR reconciliation order, the Commission shall authorize the utility to recover from its customers any net amount by which the amount determined to have been collected over the period covered was less than that actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the Commission's order in the GCR plan case. This subsection further provides that for excess costs incurred through actions contrary to the order issued in the plan case, the Commission shall authorize the recovery of costs incurred for gas sold during the 12-month period in excess of the amount recovered over that period only if the utility demonstrates, by clear and convincing evidence, that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. Also, for excess costs incurred through actions consistent with the GCR plan order, the Commission shall authorize their recovery only if the utility demonstrates that the excess costs were reasonable and prudent.

Subsection 6h(15) of Act 304 provides the methodology and calculation of interest if the Commission orders refunds or credits pursuant to subsection 6h(13) or additional charges to customers pursuant to subsection 6h(14) as part of its final order in a GCR reconciliation.

### III.

#### **TESTIMONY AND POSITIONS OF THE PARTIES**

As noted earlier, Consumers offered testimony from five witnesses in support of its application. Michael H. Ross, a Senior Accounting Analyst in the Gas Fuel and Reconciliation Accounting Section of the utility's General Accounting Department, provided the overall accounting for the utility's 2008-2009 GCR operations (including the computation of Consumers' asserted \$15.563 million net underrecovery, which it seeks to roll into its subsequent plan year), and identified the net amount included in the company's asset account applicable to this proceeding. See, 2 Tr 126-135. He also offered testimony responding to concerns expressed by the Attorney General's witness regarding the amount of Consumers' estimated unbilled sales volumes. See, Id., pp. 136-142.

A second witness offered by the utility was Erin A. Rolling, a Senior Rate Analyst in Consumers' Rates and Business Support Department. Ms. Rolling both described the effect the quarterly GCR ceiling adjustment (contingency) mechanism had on the utility's cost recovery and laid out the utility's proposed collection plan for the amounts underrecovered by the company during the 2008-2009 plan year. See, 2 Tr 113-118. She also provided testimony rebutting statements by the Attorney General's witness to

the effect that the symmetry provision of contingency mechanism was not a cause of the underrecovery. See, Id., pp. 120-123.

Consumers' third witness was David W. Howard, the utility's Director of Gas Supply. In that position, Mr. Howard began, it is his responsibility to (1) "direct the Company's efforts to obtain reliable and reasonably priced gas supply and transportation," which includes negotiating numerous gas supply and transportation contracts, (2) oversee Consumers' development of its "Gas Purchasing and Gas Hedging" strategies, and (3) supervise the utility's efforts to manage system capacity as it relates to various transportation contracts. 2 Tr 48. Mr. Howard's direct testimony was aimed primarily at demonstrating that Consumers' 2008-2009 GCR expenditures were incurred in a reasonable and prudent manner, as well as in accordance with the plan approved by the Commission in Case No. U-15454. Toward this end, Mr. Howard supplied (as Exhibit A-3) a copy of the utility's "Gas Purchasing Strategy Guidelines" that were approved for use during the 2008-2009 GCR plan year, and described the steps taken to comply with them. See, Id., pp. 50-61. In addition, he provided rebuttal testimony designed to correct several assertions and assumptions made by witnesses for MCAAA, the Attorney General, and the RRC that he considered to be erroneous. See, Id., pp. 63-74.

Consumers next presented the direct and rebuttal testimony of Dale C. Puckett, its Manager of Gas Control and Systems Planning in the utility's Electric and Gas Supply Department. Mr. Puckett's direct testimony focused on how Consumers made its operational decisions during the GCR plan year. In the course of that testimony, he discussed the operating review process that takes place both before and during the plan

year, the utility's use of the 4% probability early season bias technique to develop its design cold winter plan (as well as the techniques used to develop the company's normal and warm winter plans), the assessments Consumers made during the year, the reasons that purchase levels were adjusted as the year unfolded, and the storage field inventories the utility recorded throughout that period. See, 2 Tr 79-92. According to his direct testimony, Consumers' operational decisions and review processes were "fully consistent with, and . . . contemplated by," its previously-approved GCR plan. 2 Tr 79. In his rebuttal, Mr. Puckett (1) challenged assertions by the MCAAA's witness to the effect that excessive gas was purchased between April and June of 2008, (2) took issue with concerns expressed by the Attorney General's witness regarding whether the utility might have reduced its March 2009 gas purchases in order to allow shareholders to benefit--by way of buy/sell agreements--from the resultant excess storage space, and (3) claimed that, notwithstanding statements from the RRC's witness to the contrary, Consumers' storage withdrawal levels from November 2008 through March 2009 were based on "a complete, balanced, and technically accurate assessment" of expected system loads. 2 Tr 109; See also, Id. at 99-108.

Finally, despite offering no direct testimony, Linda J. Clark--a Senior Business Support Consultant in Consumers' Rates and Business Support Department--did supply additional rebuttal testimony in this case. Specifically, Ms. Clark sought to rebut claims by the RRC's witness to the effect that Consumers' monthly allocation of normal weather gas sales to March of each GCR year is between 1.5 and 2.0 billion cubic feet (Bcf) too high. According to her, because March generally "is a winter month with wide-ranging temperatures," coupled with the fact that Michigan's economy "deteriorated



worse than forecast” during the 2008-2009 GCR plan year, that witness’ assertions were incorrect and Consumers’ “monthly allocation of sales is reasonable.” 2 Tr 44, 45, and 46.

Based on the testimony and exhibits offered by its five witnesses, Consumers contends the Commission should find that its gas purchases for the 2008-2009 GCR plan year were consistent with the plan approved in the February 3, 2009 order in Case No. U-15454, and further find that both the decisions made and costs incurred during that period were reasonable and prudent. As a result, the utility requests that the Commission approve the reconciliation of GCR revenues and expenses set forth in its filing, and authorize it to collect the net \$15.563 million underrecovery described in its application by way of Consumers’ usual roll-in methodology.

MCAAA provided testimony from Geoffrey C. Crandall, Vice President of MSB Energy Associates, Inc., who asserted that certain of Consumers’ gas purchase decisions were not reasonable and prudent. Specifically, he asserted that the utility was “unreasonable and imprudent in purchasing too much gas at too high a price during the April-July 2008 period.” 2 Tr 221. According to Mr. Crandall, not only did that period include an unrepresentative spike in gas prices, but the company’s purchase decisions for that period deprived it of the opportunity to purchase gas later in the GCR plan year when prices were substantially lower. See, Id. He thus concluded that, as reflected on Exhibit MCA-2, Consumers over-paid by \$7,166,488 for the gas obtained for, and subsequently charged to, its GCR customers. 2 Tr 226.

In light of Mr. Crandall’s testimony, MCAAA asserts that the Commission should impose a disallowance in this case equal to the full amount of the over-payment outlined

by its witness. MCAAA argues that the evidence supplied by Mr. Crandall, as well as the Commission's decision in Case No. U-14401-R, support the requested disallowance of approximately \$7.2 million in this case.

The Attorney General called as its sole witness Ralph E. Miller, an independent consulting economist. Although not specifically proposing any disallowances himself, Mr. Miller's direct testimony<sup>1</sup> raised three areas of concern. First, and as previously indicated, he took Issue with claims to the effect that the symmetry provision included in Consumers' contingency mechanism actually led to the \$16.4 million underrecovery experienced during the 2008-2009 GCR period, and instead asserted that an unrelated correction to that mechanism--which the utility proposed in its subsequent GCR plan case<sup>2</sup>--would have prevented the problem. See, 2 Tr 158-160. Second, Mr. Miller testified that, although Consumers' operational decisions during the year were in keeping with the approved plan, an alternative gas purchasing strategy (which he refers to as the "price-outlook policy") would have reduced GCR costs during the 2008-2009 period, and thus supports its potential inclusion in the company's future GCR plans. See, Id., pp. 162-175. Third, he reported--as he has in past cases--that the utility's "unbilled sales volumes are disproportionately large compared to Consumers' monthly cycle-billed sales." Id., p. 175. According to Mr. Miller, much of this problem stems from the fact that, in reporting the level of unbilled sales, the utility includes unbilled Gas

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<sup>1</sup> Although Mr. Miller also offered rebuttal testimony, that testimony focused solely on a perceived problem with the basis of the disallowance proposed by Mr. Crandall and supported by MCAAA. Specifically, he stated that Mr. Crandall's reliance on the Commission's decision in Case No. U-14401-R as a basis for the requested disallowance was misplaced, due primarily to the fact that the MCAAA's witness apparently confused Consumers' "fixed price purchase commitments" with the utility's "monthly purchase quantities." 2 Tr 188 (Emphasis in original).

<sup>2</sup> See, the Commission's March 2, 2010 order in Case No. U-15704.

Customer Choice (GCC) program deliveries in the GCR reconciliation report of unbilled sales. See, Id., at 176-177.

In accordance with Mr. Miller's testimony, the Attorney General recommends that the Commission (1) reject the utility's assertion that the symmetry provision contained in its previously-approved contingency mechanism led to Consumers' 2008-2009 GCR underrecovery, (2) consider the purchasing cost results arising during the plan year in question, and possibly adopt--for use in future GCR plan cases--the "price-outlook policy" described by Mr. Miller, and (3) order the utility to modify its future GCR reconciliation filings to "separately identify the unbilled volumes on lines 11-13 of Exhibit A-16 as 'Unbilled GCR Sales and Unbilled GCC Deliveries'." Attorney General's initial brief, p. 10.

For its part, the RRC sponsored direct testimony from Frank J. Hollewa, an independent energy consultant with Energy Planning and Engineering Consultants. Although identifying several concerns he had regarding Consumers' gas supply and procurement activities--ranging from his belief that the company's normal weather March sales estimates are 1.5 to 2.0 Bcf too high to his assertion that fixed price purchases should be defined as those made at least one month prior to the delivery date--Mr. Hollewa did not suggest any related disallowances. See, 2 Tr 199-215. Rather, he simply recommended that the utility incorporate his proposed changes "in its planning and operations for the 2010-11 GCR period." Id., at p. 215. Consistent with Mr. Hollewa's testimony, the RRC asserts that it "will pursue those issues in a future GCR plan proceeding if, going forward, Consumers . . . does not address them in a meaningful way." RRC's initial brief, p. 2

Finally, and as noted above, the Staff presented no witnesses in this case. Nevertheless, based on its review of the record, the Staff concluded that Consumers' actions with regard to its gas purchases (and specifically those undertaken from April through July of 2008) were "reasonable and prudent, and consistent with the GCR plan approved by the Commission in Case No. U-15454." Staff's initial brief, p. 2. As such, the Staff recommends rejecting the disallowance proposed by MCAAA and, instead, supports adopting the utility's application in its entirety. See, id., p. 3.

#### IV.

#### **DISCUSSION AND FINDINGS**

The testimony and exhibits presented by Consumers indicate that, for the 12-month period at issue, the utility accumulated \$1,748,007,427 in GCR revenues and \$16,833,183 in other refundable amounts,<sup>3</sup> for a total of \$1,764,840,610. See, i.e., Exhibit A-16, col. N, lines 31-36. The record further indicates that all amounts included in the company's 2008-2009 GCR booked cost of gas sold totaled \$1,781,219,704, thus resulting in a net \$16,379,094 underrecovery. See, id., col. N, lines 24, 36, and 37. Moreover, as noted by Mr. Ross and reflected on Exhibit A-17, \$815,955 must be subtracted from that figure to reflect the interest owed to customers pursuant to Subsection 6h(15) of Act 304. See, 2 Tr 134. As mentioned earlier, Consumers seeks to recover the net of these two amounts, namely \$15,563,139, from its GCR customers through application of the roll-in methodology set forth in its standard refunding procedures. See, Exhibit A-18 and 2 Tr 113-114.

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<sup>3</sup> This "other refundable amounts" total was comprised of a prior year overrecovery of \$16,794,857 and a GCC Supply Equalization Charge in the amount of \$38,326. See, Exhibit A-16, lines 32-35; 2 Tr 129-130.

No dispute exists regarding the computation of the above-mentioned figures. However, based upon the testimony provided by Messrs. Crandall and Miller, four discrete areas of conflict remain. The first concerns whether, as Mr. Crandall and MCAAA contend, certain of Consumers' gas purchases during the April through July 2008 period were unreasonable and imprudent. The remainder stem from the three above-mentioned requests proposed by Mr. Miller and adopted by the Attorney General. Each of these issues is separately addressed below.

#### April through July 2008 Gas Purchases

In general, MCAAA's proposed \$7,166,488 disallowance is based on its witness' assertion that Consumers purchased "too much gas at too high of a price during the April-July 2008 period," a period that included an unrepresentative spike in gas prices. MCAAA's initial brief, p. 2 (citing 2 Tr 221). Claiming that (1) the utility's excessive purchases during that period deprived it of the opportunity to purchase gas later in the GCR plan year at lower prices, and (2) that circumstances supporting a reduction in the amount of gas purchased during the Spring-Summer period existed at the time Consumers made its April-July 2008 purchase decisions, MCAAA recommends that the Commission find the company's actions to be unreasonable and imprudent. Id., at 2-3. It therefore requests imposition of the disallowance suggested by Mr. Crandall.

In support of this request, MCAAA cites testimony from Mr. Crandall to the effect that a "combination of factors occurred" (all of which were known by Consumers and "are discernable from the Company's own testimony, exhibits, and related information") that should have prompted the utility to reduce the level of gas purchases made during the April-July 2008 period. 2 Tr 226. Specifically, Mr. Crandall pointed out that :

- As of April 1, 2009, the Company's gas inventory was 2.9 Bcf above the original Plan.
- As of April 1, 2009, the gas requirements were 0.5 Bcf below the Plan forecast.
- The Company's gas requirements in the second quarter fell dramatically, a situation which the Company should have immediately addressed by reducing purchases to align to the falling requirements.
- Michigan's steep economic decline and plant closings should have been a signal that [Consumers'] gas sales and other gas requirements would likely continue to fall, and on a permanent basis for the duration of the Plan.
- The gas prices were escalating rapidly during the price spike in these months, which should have engendered a stronger immediate response for the Company to avoid purchasing as much gas as possible during these months, particularly since the Company as of April 1, 2008, already had secured at fixed prices 54% of its gas requirements (based upon the higher required volume assumptions of the Plan, not the lower requirements being realized at the time). The Company should also have been aware that the price spike during the May-July 08 period would likely be temporary and unrepresentative of the gas prices that would be available later in the Plan year, or for the Plan period. Past experience has shown that such pronounced price spikes are relatively unusual and unsustainable and last for a short time. I refer to my Exhibit [MCA-3] that shows gas prices, taken from the U.S. Energy Information Administration, over the last 20 plus years. The previous price spike, occurring during [Hurricane] Katrina in 2005, was short lived and the prices at the peak were unrepresentative. Given that [the utility] had secured a large amount of gas by April 1, 2009 at fixed prices, and that its gas requirements were falling drastically, [Consumers] would have been reasonable and prudent in cutting back its 2<sup>nd</sup> quarter purchases much more than it did, so as to avoid the price spike and to minimize its gas for the Plan year.

Id., at 226-228. He further stated that, notwithstanding other witnesses' statements to the contrary, "his conclusions were not based upon a 'hindsight' analysis of the facts

and circumstances occurring during the Plan year,” and offered these additional factors in support of his recommended disallowance:

[Consumers’] own filing indicates that [the utility] cut back its purchases of gas during the 4<sup>th</sup> Quarter of 2008. Yet this was a period of much lower gas prices. [It] missed this opportunity to take advantage of this lower priced gas to minimize GCR gas costs for this Plan year. [The utility] missed this opportunity because it chose to purchase too much gas earlier in the Plan year.

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My analysis focuses upon the facts and circumstances existing and fully known to the company as of April 2008 and going forward. As noted, at that time, [Consumers] had already secured ample gas supplies (54%) at fixed prices, and knew (or should have known) that gas prices were escalating, and at the same time [its] gas sales forecasts were declining. [The utility] was in an excellent position to cut back purchases during April-July 2008, and even beyond that, while still being assured of acquiring adequate gas supplies at reasonable prices to meet the requirements for the Plan year. In short, [Consumers] bought too much gas, too early in the plan year, at too high of a price, and that eliminated the opportunity to buy gas supplies later in the year at cheaper prices. This opportunity could have been preserved if [the company] had displayed resistance to buying gas at escalating prices early in the Plan year, and by cutting back purchases to a per-month average month basis going forward, beginning in April 2008.

2 Tr 223-224.

Mr. Crandall went on to state that his recommendations were neither inconsistent with nor barred by Consumers’ Commission-approved GCR plan and gas purchase strategy guidelines. See, 2 Tr 224-225. Toward this end, he asserted that “the Plan Guidelines provide considerable discretion to the Company” and allow for “a range of purchases” to be actually undertaken during the plan year. Id., at 225. He therefore claimed that under the previously-approved plan and purchasing guidelines, the utility could have, based on “the circumstances faced in the Plan year,” undertaken a more

“reasonable and prudent” approach to gas purchases which, in turn, “would have resulted in lower gas costs being incurred.” Id.

Finally, Mr. Crandall contended that imposition of his proposed disallowance is supported by recent Commission precedent. In so doing, he cited the Commission’s December 18, 2007 order in Case No. U-14401-R (which MCAAA notes was subsequently affirmed by the Court of Appeals, albeit in an unpublished opinion). See, MCAAA’s initial brief, pp. 6-7. According to Mr. Crandall:

In MPSC Case No. U-14401-R, the Commission adopted a rate adjustment (disallowance) of approximately seven million dollars in the Michigan Consolidated Gas Company’s GCR reconciliation case for 2005. The Commission found that [Michigan Consolidated Gas Company] (Mich Con) waited too long in its Plan period to purchase gas, and should have purchased gas over a longer timeframe. In this case, a similar situation has occurred. However, in this case, [the utility] bought too much gas too early in the Plan year (at high cost), thereby depriving [Consumers] of the opportunity to spread out its purchases over a longer period of months, which would have resulted in lower gas costs. The precedent in U-14401-R supports my recommendation in this case.

2 Tr 224.

MCAAA thus concludes that, based on “the various factual circumstances that existed at the time of [Consumers’] April-July 2008 purchase decision,” it is clear that the utility “did not adjust its purchases to align with changed circumstances” (such as higher-than-planned gas in storage, falling sales and sales forecasts, and the sufficiency of committed gas purchases). MCAAA’s initial brief, p. 7. As a result, it continues, the utility’s gas purchases during that period were “unreasonable and imprudent, at least to the degree and in the amount” calculated by Mr. Crandall and reflected on Exhibit MCA-2. Id., at 9. For these and other reasons, MCAAA argues that



the Commission should disallow \$7,166,488 of the gas costs incurred by Consumers during the GCR plan year in question. MCAAA's reply brief, p. 18.

Consumers takes issue with MCAAA's arguments on several grounds. First, and foremost, it asserts that Mr. Crandall's conclusion (to the effect that Consumers should have delayed purchasing 3.8 Bcf of gas from the April through July 2008 period to the October 2008 through March 2009 time frame, when prices ultimately turned out to be lower) is not supported by the record as a whole. Rather, the utility contends that evidence offered in this case shows that the purchases made during the April-July 2008 period were all "made in accordance with the Company's approved GCR Plan and were reasonable and prudent based on the information available at the time the purchasing decisions were made." Consumers' initial brief, p. 14. According to the utility, following the course of action advocated by Mr. Crandall would have necessitated (1) abandoning the Commission-approved gas purchase plan, (2) ignoring the operational requirements of the utility's storage and transmission system, (3) speculating as to future gas prices, (4) disregarding available information regarding future natural gas price expectations, and (5) placing customers "at risk of higher prices, supply shortfalls, and loss of service." Id.

In support of this assertion, Consumers cites the following rebuttal testimony from Mr. Howard:

Adopting Mr. Crandall's approach would have the Company file a plan, obtain its approval and then abandon the plan and instead adopt speculative, unproven and undisciplined gas acquisition practices. The actions he advocates would have been contrary to sound purchasing strategy. The Company does not believe it is appropriate to play roulette based on speculation that the gas price may go down or ignore an approach to making purchases that has been historically successful and has been approved by the Commission for the current GCR year.

2 Tr 67. Moreover, Consumers notes, Mr. Howard pointed out that because “there is only a limited amount of time in which the Company can safely and efficiently complete its storage injection cycle,” and because the injection cycle is “conducted at the same time as most of the maintenance” on the utility’s transmission and storage system, a “careful and prudent planning of purchases and maintenance work” is essential to ensuring that enough gas ends up in storage by October 31 to allow Consumers’ to meet all of its customers’ needs during the cold weather months. 2 Tr 71-72.

Along those lines, Mr. Puckett testified that failure to put adequate amounts of gas into all of the utility’s storage fields--and into its peaking fields, in particular--during the injection period could result in at least intermittent supply shortages. Specifically, he noted that because each field has a maximum withdrawal level, “the extra gas planned to be withdrawn from the base load fields” during a sustained cold weather period would actually “need to flow from peaking fields.” 2 Tr 93. Thus, he continued:

If a cold day occurred, the peaking fields would not have the withdrawal capability previously planned due to their below plan inventory. There would be a general supply shortage. Potentially, gas customers could lose service.

Id. Mr. Puckett went on to point out that, rather than ignoring the factors underlying MCAAA’s claim that Consumers purchased too much gas during the summer of 2008, the Company recognized those factors and actually reduced its purchases during that period--albeit within the parameters established by the Commission-approved plan. Specifically, he stated that:

[Consumers] strived throughout the summer to ensure the proper progression towards the October 31, 2008 GCR/GCC working inventory target set forth in the GCR plan by balancing below plan sales with potentially reduced GCR purchase capacity later in the summer. This

planning, along with an end of March 2008 GCR/GCC working inventory which was roughly 2.9 Bcf above the filed plan, required the Company to reduce summer purchases by approximately 5.8 Bcf relative to the assumptions in the Plan in order to achieve the October 31, 2008 target inventory.

2 Tr 84-85. Based on this testimony, the utility argues that all claims to the effect that it should have reduced its April through July purchases by an additional 3.8 Bcf “cannot be justified based on any operational or planning criteria.” Consumers’ initial brief, p. 18.

The utility further argues that what it refers to as the “beat-the-market” approach advocated by MCAAA’s witness “is contrary to both historical price behavior and to information available at the time as to future natural gas prices.” Id., at 19. Specifically, Consumers asserts that:

Mr. Crandall’s speculation that Consumers Energy “understood” that gas prices were increasing to a price peak is not supported by the record evidence. Nobody could have predicted what prices would be. Gas prices have historically been lower in the summer than in the winter. 2 Tr 158. Mr. Howard testified that the price trend at the time purchases were made was that prices were higher in the final six months of the GCR period than they were during the April-July 2008 period. 2 Tr 69. He stated:

For the period March 2008 through June 2008 gas prices were actually increasing between 6 and 18% per month for both the summer and winter periods. This pricing scenario was the reality facing the Company as it made its required natural gas purchase. There was no evidence at the time the purchases were made that this environment of increasing natural gas prices would change. There was no way to determine with certainty how high gas prices would increase or when they might peak. 2 Tr 67.

Exhibit A-20 illustrates the NYMEX prices that were effective at the time the April through July 2008 purchases were made. 2 Tr 70. Exhibit A-20 illustrates the speculative and hindsight nature of Mr. Crandall’s assertions. Information available at the time indicated that waiting until a later period to make purchases would result in higher costs.

Id. According to the company, “using the approach advocated by Mr. Crandall would defeat the purposes of the gas purchasing strategy guidelines and would be unreasonable and imprudent. Consumers’ initial brief, p. 20.

Finally, Consumers asserts that MCAAA’s proposed disallowance is not based on facts in existence at the time that it was making its purchase decisions. Id., p. 23. The approach that Mr. Crandall advocates, the utility contends, “would have required speculation and would have required taking actions inconsistent with the approved GCR plan.” Id., citing 2 Tr 69. Thus, according to the company, “Mr. Crandall’s arguments and proposed disallowances are based on improper hindsight” and thus must be rejected. Id.

The only other party to specifically address this issue, namely the Staff, likewise took issue with MCAAA’s requested disallowance.<sup>4</sup> According to the Staff, MCAAA’s witness wrongly believes that “Consumers understood that gas prices were increasing steadily toward another price peak that would not last” based on previous short-lived, hurricane-related price spikes. Staff’s initial brief, p. 2, citing 2 Tr 222. Rather, the Staff contends that, based on Mr. Howard’s above-quoted testimony to the effect that gas future prices were climbing by 6% to 18% during the March through June 2008 period, the utility’s actions were “reasonable and prudent and consistent with the GCR plan approved by the Commission in Case No. U-15454.” Id. Also, and consistent with the Attorney General, it claims that MCAAA’s reliance on the Commission’s order in Case

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<sup>4</sup> As noted earlier, the Attorney General sponsored rebuttal testimony from Mr. Miller to the effect that Mr. Crandall’s reliance on the Commission’s decision in Case No. U-14401-R as a basis for the requested disallowance was misplaced. Notwithstanding that testimony, the Attorney General did not take a position on this issue in either his brief or reply brief.

No. U-14401-R is misplaced. In that proceeding, the Staff asserts, the utility's disallowance was based on the company's failure to follow the Commission approved gas purchasing guidelines. In contrast, it notes that Consumers did not--at least in this proceeding--deviate from the gas purchase plan approved by the Commission in the underlying GCR plan case. See, Id., at p. 3. The Staff therefore concludes that MCAAA's proposed disallowance should be rejected.

The ALJ agrees with Consumers and the Staff, and finds that MCAAA's proposed disallowance should not be adopted. As the record shows, Consumers did reduce its initially-planned summer 2008 gas purchases by 5.8 Bcf in recognition of the fact that (1) it had a higher-than-expected stored gas inventory as of March 31, 2008, (2) system-wide usage during the start of the 2008-2009 GCR plan period was lower than estimated, due in large part to the weak economy, and (3) gas prices were higher than normal, at least during the start of the injection season. See, 2 Tr 66, 84, and 101. While MCAAA correctly notes that reducing those summer purchases by another 3.8 Bcf could have produced additional savings, the information available to the utility at the time those purchases were made did not support such an approach.

As reflected on Exhibit A-20, NYMEX prices available at the time that Consumers made its April through July 2008 purchases were expected to steadily increase on a month-to-month basis throughout the summer, and the futures prices for October 2008 through March 2009 were not only expected to be higher than current month prices, but also were expected to continue climbing. As noted by Mr. Howard:

There was no evidence at the time that the purchases were made that this environment of increasing natural gas prices would change. There was no way to determine with certainty how high gas prices would increase or when they might peak.

2 Tr 67. Also, and as correctly noted by Mr. Howard, “summer prices are typically less expensive than winter prices,” thus further supporting Consumers’ actual purchase levels during the period in question. Id., at 71.

Moreover, as pointed out by both Mr. Howard and Mr. Puckett, Consumers’ gas operations and its GCR plan rely heavily on storage to meet both its overall winter and peak day gas supply requirements. See, 2 Tr 50, 95, and 102. As a result, the steps taken by the utility throughout the injection cycle (including the April through July 2008 period) were geared toward meeting the Commission-approved October 31, 2008 working gas inventory target of 175.2 Bcf (a target the company missed by less than one percent, by the way).<sup>5</sup> According to Mr. Puckett, achieving that inventory level “would not have been possible had purchases been reduced by the amount suggested by Mr. Crandall.” Id., at 100. As noted above, the company’s failure to meet that storage target could result in a general supply shortage or the potential loss of service to Consumers’ customers. See, 2 Tr 93.

Finally, the ALJ agrees with the Staff’s assertion that MCAAA’s reliance on the Commission’s December 18, 2007 order in Case No. U-14401-R is misplaced. A close reading of that order indicates that although Mich Con’s approved gas purchase guidelines allowed the utility to use the “Dollar Cost Averaging” (DCA) method to make its purchases at any time during the months of April, May, or June, the company delayed all of its initial DCA winter gas supply purchases until the very last day of that period, namely June 30, 2005. In defending its actions, Mich Con contended that it delayed making those purchases because it thought prices would be lower if it waited.

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<sup>5</sup> Specifically, Consumers’ actual October 31, 2008 working gas inventory was 176.1 Bcf, leaving the utility within 0.51% of the goal established in the company’s CGR plan case. See, 2 Tr 100.

Nevertheless, the Commission concluded that the utility had not provided a reasonable explanation for the delay, ruling instead that “Mich Con should not have attempted a beat-the-market approach in its timing of DCA purchases.” December 18, 2007 order in Case No. U-14401-R, at p. 10. In the present case, MCAAA essentially contends that Consumers should be penalized for not doing what Mich Con did (e.g., attempting to beat the market by delaying scheduled April through July purchases in hopes that prices would drop). As such, the decision in Case No. U-14401-R does not support MCAAA’s proposed disallowance.

In summary, the evidence offered in this case shows that (1) Consumers acted in accordance with its gas purchasing guidelines, (2) the utility had a rational basis for its specific purchase decisions, including its election to purchase 5.8 Bcf less gas during the summer of 2008, and (3) the reasoning underlying those decisions was consistent with the Commission-approved GCR plan, the company’s past practice, and the system’s operational constraints. Because the purchasing decisions were reasonable and prudent when made, the ALJ recommends that the Commission reject MCAAA’s proposed disallowance.

#### Symmetry as a Cause of the Underrecovery

The Attorney General and Consumers appear to be in agreement that (1) the utility experienced a \$15.6 million net underrecovery during the 2008-2009 GCR plan year, and (2) that this amount should be rolled into the Company’s 2009-2010 GCR plan. Moreover, they--as well as their respective witnesses--also appear to agree that the operation of the Commission-approved contingency mechanism led to a contingent factor adjustment that did not allow the Company to fully recover the GCR costs

incurred during the year in question.<sup>6</sup> See, 2 Tr 116-117, 122, and 158-159. However, the Attorney General and his witness took issue with what they perceived as an attempt to place the blame for this situation on the contingency factor's use of symmetry, and further expressed concern that Consumers might be attempting to use the under-recovery experienced during 2008-2009 as an excuse for rejecting symmetry's inclusion in future plan cases. See, the Attorney General's initial brief, pp. 4-5, and his reply brief, at pp. 1-3.

The ALJ does not find the Attorney General's assertions persuasive, and instead agrees with Consumers that no issue regarding the structure of future contingency mechanisms (including the continued application of symmetry) need be decided by the Commission in the present proceeding. This conclusion is based on the following two factors.

First, and notwithstanding the Attorney General's apparent belief to the contrary, a close reading of both the testimony offered by Consumers' witness on this issue and the company's subsequently-filed arguments reflects that the utility neither claimed that symmetry constitutes an ill-conceived policy nor that it should be rejected in any future GCR plan cases. Rather, Ms. Rolling's testimony regarding how the NYMEX-based contingency mechanism functioned during the 2008-2009 GCR plan year simply took the position that symmetry, in combination with other provisions of that mechanism and the widely-fluctuating market price of gas, served to bar recovery of all GCR costs incurred during the plan year. Specifically, she began by testifying that:

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<sup>6</sup> Specifically, testimony offered by Mr. Miller and Ms. Rolling indicates that the underrecovery arose from the fact that when the higher-than-normal gas prices experienced during the spring and summer of 2008 suddenly dropped during the third quarter of that year, those lower prices triggered a decrease in the maximum allowable GCR ceiling factor for the remainder of the plan year. Id.



The main factor which contributed to the under-recovery for the 2008-2009 GCR year was the price volatility in the natural gas market. [NYMEX] gas prices significantly increased in the first half of the plan year. The Company bought a large portion of its gas during this time to prepare for the heating season. During the first six months of the Plan year, the ceiling price adjustment mechanism resulted in a decrease in the maximum allowable plan ceiling factor for the remaining six months of the plan year. The revised ceiling factor did not allow the Company to recover the higher costs incurred in July and August of 2008. This was due to the fact that the methodology in place limited, through the application of symmetry, the ability of the Company to charge at a level that would allow for full recovery of costs when prices for future periods fall below the levels that the Company has incurred for purchases earlier in the GCR year.

2 Tr 116-117. Moreover, nowhere in Consumers' initial brief or in its reply brief, is there a request to ban the use of symmetry in future cases. Thus, although the Attorney General may have been more comfortable had Ms. Rolling's testimony and the utility's discussion of this issue been phrased differently, neither her testimony nor Consumers' filings advocate abolishing symmetry.

Second, it bears noting that in Consumers' subsequent GCR plan case (namely, Case No. U-15704) included a Commission-approved change to the contingent factor mechanism--proposed by the utility and apparently agreed to by the other parties to that case--to alleviate the problem experienced during the last six months of the 2008-2009 GCR plan year. Even the Attorney General's witness testified that had the higher GCR factor ceilings resulting from that change been available during the 2008-2009 plan year, those ceilings "would clearly have been more than adequate for Consumers to be able to avoid the March 2009 under-recovery." 2 Tr 160. This is despite the fact that symmetry was a part of both GCR plans.

The ALJ thus recommends that the Commission find that no issue presently exists regarding the continued use of symmetry that warrants a decision in this case.

## Future Consideration of 2008-2009 Purchasing Guideline Results

During any given GCR year, Consumers--like all gas utilities--must make several monthly operational decisions, each of which can ultimately affect both the booked cost of gas sold and the reliability of the utility's gas supply when compared with the weather-normalized levels approved in the corresponding GCR plan case. As noted by the Attorney General, MCL 460.6h(12) "recognizes this reality by requiring the Commission to consider any issue regarding the reasonableness and prudence" of gas costs charged to Consumers' customers "if the issue could not have been considered adequately at a previously conducted gas supply and cost review." Attorney General's initial brief, p. 5. However, as he also pointed out, any evaluation of the reasonableness and prudence of the decisions made by a utility during a year must be "decided in light of what a utility knew or should have known at the time it made its decisions." Id.

In the case at hand, the Attorney General's witness reviewed Consumers' 2008-2009 GCR plan, evaluated the results of implementing that plan (particularly with regard to the overall costs resulting from adherence to the Commission-approved gas purchasing strategy guidelines), and then explained how different actions by the utility might have affected the utility's booked cost of gas. See, 2 Tr 162-171. Mr. Miller then went on to explain how an alternative purchasing strategy (referred to as "the price-outlook policy," and which calls for varying the timing of scheduled purchases based on such things as differences in NYMEX futures prices) could have resulted in lower GCR costs during the 2008-2009 plan year. See, 2 Tr 171-175. Thus, while not proposing any disallowance for the year in question because Consumers had followed the Commission-approved purchasing plan, he did suggest that his alternative purchasing

strategy may constitute a sound policy that should be considered for use in future GCR plan cases. Id.

Based on this testimony, the Attorney General requests that the ALJ issue a Proposal for Decision (PFD) that:

recommends considering the results from following MPSC-approved purchasing guidelines during 2008-2009 and that recommends ordering [Consumers] to include an analysis of this history when the Company develops and presents its future GCR natural gas purchasing plans.

Attorney General's initial brief, p. 7. In making this request, the Attorney General continues, he is not claiming that the utility either knew or should have known during the course of the 2008-2009 GCR plan year that it could have reduced its overall booked cost of gas sold by modifying its previously-approved GCR plan. Rather, he contends simply that "the historical information provides a reasonable and prudent basis for considering" the adoption of different purchasing practices (such as that proposed by Mr. Miller) in the course of future GCR plan cases.

Consumers opposes the Attorney General's proposed mandate that it consider the implications of the 2008-2009 events and results, and include an analysis of this history in its future GCR plan case filings. Its opposition to that mandate is based primarily on the fact that, in Consumers' now-completed GCR plan case for 2009-2010 (Case No. U-15704), several parties--including the Attorney General--recommended various changes to the utility's proposed gas purchasing guidelines. Consumers notes that, although the Commission's March 2, 2010 Order in that case rejected changes to the guidelines proposed by the Attorney General and the RRC, it adopted changes proposed by the Staff. Moreover, the utility continues, its filing in the 2010-2011 GCR plan case (Case No. U-16149) has already been submitted. Consumers thus contends

that requiring it to prepare and submit “analyses of [its] 2008-2009 guidelines that have since been changed would not be an efficient use of resources.” Consumers’ reply brief, p. 15.

The utility also argues that past Commission decisions support its position. For example, the Company cites the February 3, 2009 order in Case No. U-15454 (its 2008-2009 GCR plan case), in which the Commission rejected a recommendation that Consumers be required to prepare and provide additional studies in future Act 304 cases. In that order, it was held that:

The Commission also agrees with Consumers that the task of preparing quantitative analyses of data not necessarily germane to the utility’s direct case in an Act 304 proceeding should not be made an ongoing utility responsibility.

February 3, 2009 order in Case No. U-15454, p. 13. The utility therefore argues that, consistent with the above-quoted ruling, any party wishing to “address or analyze the results that occurred from following the 2008-2009 [gas purchasing] guidelines” should bear the burden of preparing and presenting such analysis, and that the burden of doing so should not be shifted to the Company. Consumers’ reply brief, p. 16.

The ALJ finds Consumers’ arguments on this issue persuasive, and thus recommends that the Commission refrain from requiring the utility to submit--as part of its initial filing in future GCR plan cases--the analysis proposed by the Attorney General. To the extent that the Attorney General or any other party to Consumers’ future Act 304 cases seeks to propose alternative gas purchasing guidelines and to support them with information like that developed by Mr. Miller in this case, they are free to do so. However, based on the Commission’s above-cited order in Case No. U-15454, it does not appear appropriate to mandate that the utility do so instead.

### Modification of Exhibit A-16 Regarding Unbilled Sales

The final matter to address in this case relates to Mr. Miller's continued assertion that Consumers' unbilled sales volumes seem disproportionately large when compared to its monthly cycle-billed sales. As noted earlier in this PFD, much of this asserted problem stems from the fact that, in reporting the level of its unbilled sales, the utility includes unbilled GCC program deliveries as part of the GCR reconciliation report regarding unbilled sales. As specifically stated by Mr. Miller:

Although the unbilled volumes on lines 11-13 of Exhibit A-16 are identified explicitly (line 13) or implicitly (lines 11-12, based on lines 10 and 13) as "rate schedule sales" to GCR customers, they also include unbilled deliveries to [GCC] customers. The inclusion of unbilled GCC deliveries in the GCR reconciliation report of unbilled sales is one of the reasons these reported unbilled sales volumes are inordinately large in comparison to cycle-billed GCR sales.

2 Tr 177. He went on to opine that including GCC unbilled sales in that manner may also "introduce some distortions and perhaps some inequities" into Consumers' recovery of its GCR cost of gas. *Id.*, at 178. In light of this testimony, the Attorney General contends that the Commission should require the utility to "modify its GCR reconciliation to separately identify the unbilled volumes on lines 11-13 of Exhibit A-16 as 'Unbilled GCR Sales and Unbilled GCC Deliveries'." Attorney General's initial brief, p. 8 [citing 2 Tr 178].

In opposition to the Attorney General's proposed changes to the current format of Exhibit A-16, Consumers cites testimony offered by Mr. Ross to the effect that the utility "monitors unbilled sales volumes each month for sustained trends, assesses unbilled volumes at the end of each quarter, reviews its conclusions with external auditors, and adjusts unbilled volumes as appropriate." Consumers' initial brief, p. 27 [citing 2 Tr 131-

132]. Consumers further notes that, in addition to its quarterly assessments, the utility made monthly assessments of its unbilled volumes from July 2008 to March 2009, and that “the only unbilled accrual that does not reverse during the GCR year is the unbilled accrual for March.” Id. Finally, Consumers points to the fact that, as noted by Mr. Ross:

[Exhibit A-16] is an accounting based document. The accounting policy supporting these amounts reflects not only Generally Accepted Accounting Principals (GAAP), but also the established and agreed upon business processes and procedures used to manage, report and bill gas volumes. The Company’s accounting policy is correctly characterizing unbilled consumption as both a GCR cost and as a GCR unbilled revenue. Under the present GCC program, if GCC consumption is not billed, it is not considered to be GCC consumption. Consumers . . . is complying with GCC and GCR program parameters.

2 Tr 140. For these and other reasons, the utility asserts that proposed changes to Exhibit A-16 should be rejected.

Once again, the ALJ finds Consumers’ assertions more persuasive than those offered by the Attorney General. Testimony provided by Mr. Ross shows that the utility is properly reflecting unbilled consumption as both a GCR cost and as GCR unbilled revenue when performing its calculation of the GCR over- or underrecovery on Exhibit A-16. See, 2 Tr 140-141. Moreover, the record reflects that, as specifically noted by Consumers’ witness on this topic:

[T]he current format of Exhibit A-16 . . . properly reflects the current accounting for GCR costs, billed and unbilled revenues, as well as any implications related to the accounting for the GCC program. The changes suggested by Mr. Miller would be contrary to the current GCR and GCC accounting policy and would not add clarity to this report.

2 Tr 141. In light of this testimony, the ALJ agrees with the utility that the Attorney General’s witness--Mr. Miller--failed to show that the change he recommended in Exhibit A-16 would be appropriate, at least in this specific instance. It is therefore

recommended that the Commission deny the Attorney General's request to modify the current structure of Exhibit A-16, or any similarly developed and numbered exhibit.

## **V.**

### **CONCLUSION**

Based on the foregoing, the ALJ recommends that the Commission issue an order adopting the findings and conclusions set forth above. Specifically, it is recommended that the Commission (1) reject the proposed disallowance relating to the April through July 2008 gas purchases, (2) accept the interest-adjusted figure of approximately \$15.563 million as Consumers' net underrecovery for the 2008-2009 GCR plan year, and (3) approve the utility's unopposed request to roll that underrecovery (adjusted for interest) into a subsequent GCR plan year proceeding. It is also recommended that the Commission deny the Attorney General's requests regarding the symmetry provision included in Consumers' contingency mechanism, the alternative gas purchasing strategy proposed by Mr. Miller, and the proposed modification of Exhibit A-16 (or any similar document) submitted by the utility in future Act 304 cases.

Finally, it should be noted that any arguments or potential issues not specifically addressed in this PFD were deemed to be irrelevant to the ALJ's ultimate findings and conclusions.

STATE OFFICE OF ADMINISTRATIVE  
HEARINGS AND RULES  
For the Michigan Public Service Commission

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Mark E. Cummins  
Administrative Law Judge

August 25, 2010  
Lansing, Michigan  
dmp